

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.228 of 2017

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1. Sanjay Kumar, Son of Late Kali Singh, resident of village and P.S. Fatehpur, District - Gaya
 2. Vijay Yadav, Son of Late Budhan Yadav, resident of village - Madanbigha, P.S. Fatehpur, District – Gaya
- ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
 2. The Chief Engineer, Water Resources Department, Bhagalpur
 3. The Superintending Engineer, Water Ways Circle, Jamui
 4. The Executive Engineer, Water Ways Division, Sheikhpura ... Respondents
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Appearance :

For the Petitioners : M/s Banwari Sharma & Shiv Kumar, Advs.
For the Respondents : Mr. Kunal Tiwari, AC to GA II

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

7 20-06-2018

Heard learned counsel for the petitioners and the State.

In this case, both the petitioners are challenging their respective orders of termination, which have been issued vide Letters no. 679 and 683, dated 12.09.2016, passed by the Chief Engineer, Water Resources Department, Bhagalpur, and have been annexed as Annexures 14 and 15 to this writ application.

As per the statement, made in this petition, both the petitioners have been working since 10.07.1982 and 18.10.1982 respectively. At one stage, the services of the petitioners were regularized by the order of the Chief Engineer, namely, Laxman Ram, who was posted at Bhagalpur at the relevant time and discharged the duty of the Chief Engineer. After his transfer, when the new incumbent joined the post, it was reported that there were some illegalities in regularization of the petitioners and other similarly



situated persons, accordingly, both the petitioners were issued show cause and thrust was given that the names of these petitioners were not approved by the District Establishment Committee, headed by the Collector, Bhagalpur. It further appears from the record that the names of 116 persons were sent for consideration/regularization and the Collector found 94 daily wagers suitable for the regularization. In the list of 94 persons, names of petitioners are not standing is the cause for termination of service of the petitioners.

The learned counsel for the petitioners submits that he has given the detail of persons in paragraph 23 of the writ application, who have been regularized in service though they are juniors to the petitioners and the names of these petitioners were also sent for consideration by the District Establishment Committee but, their names have not been considered. But, only on account of mistake committed by the Chief Engineer of having not get the approval from District Establishment Committee, regularized their service.

These petitioners are seniors, having been engaged prior to those persons who were regularized in service, then, it is incumbent upon the authority that those who are seniors cannot be ignored for the regularization as petitioners have first charge over the others for regularization in service and placed reliance on the judgment reported in (2006)4 SCC, 1 (State of Karnataka & Ors. Vrs. Umadevi &



Ors.), and AIR 2018 SC, 233, (Sheo Narain Nagar & Ors. Vrs. State of Uttar Pradesh & Ors.) in which the case of **Umadevi** has been interpreted in meaning and its applicability.

In such view of the matter, this Court directs that the names of these petitioners should, again, be placed before the District Establishment Committee, which will consider the aspect of the matter of the persons, who were juniors, having been regularized. If that be so, in such circumstances, there is no other way out, then, the order terminating the service will not stand and it will be treated that the petitioners are absorbed from the date of their juniors.

All the processes must be completed within a period of four weeks, from the date of receipt/production of a copy of this order.

The original records, which has been filed by the State, is being handed over to the counsel for the State for returning it to the Department, concerned.

With these observations and directions, this application is **disposed off.**

(Shivaji Pandey, J)

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